

**Much Shelist Freed Denenberg Ament & Eiger, P.C.**

ATTORNEYS AT LAW

200 North LaSalle Street, Suite 2100  
Chicago, Illinois 60601-1095  
312/346-3100 Telephone  
312/621-1750 Telecopier

Joseph D. Ament	Victoria Rafols-Brown
Sharon Swarsensky Bilow	Deborah Schmitt Bussert
Richard E. Brandwein	June Wojtowicz Grady
Howard M. Cohen	Marian Conroy Haney
Howard M. Denenberg	Wendy B. Kahn
Lawrence H. Eiger	Jordan Z. Katz
Mary Jane Fait	Steven A. Koga
Michael J. Freed	Alan D. Leib
James B. Gottlieb	Ralph M. Martire
Michael B. Hyman	James E. Matanky
Steven A. Kanner	Evon Olson
Sidney M. Levine	Philip L. Pomerance
Morrie Much	Arthur E. Rosenson
Stephen G. Ryza	Suzanne W. Ryder
Michael B. Sadoff	Christopher J. Stuart
Steven Schwartz	Yerachmiel E. Weinstein
Michael R. Shelist	Jeffrey S. Wilson
Norman A. Shubert	
Anthony C. Valiulis	OF COUNSEL
Stewart M. Weltman	Lawrence E. Glick
Kenneth A. Wexler	Philip B. Heller
Frederick L. White	Lawrence Kasakoff
Stuart M. Widman	

August 22, 1988

CERTIFIED MAIL

RECORDATION NO. 15163-A FILE 1423

SEP 1 1988 - 3 24 PM

Interstate Commerce Commission  
12th & Constitutional Avenue, N.W.  
Room 2303  
Washington, D.C. 20423

Attn: Mildred Lee

WRITER'S DIRECT LINE 621-1409

8--245A077

No. SEP 1 1988

Date .....

Fee \$ 13.00

RE: Fifth Amendment to Loan and Security Agreement  
Borrower: Copperweld Steel Company, ICC Washington, D. C.  
Lender: Sanwa Business Credit Corporation

Dear Ms. Lee:

Enclosed for recording is an original and two counterparts thereof of the Fifth Amendment to the Loan and Security Agreement which has been acknowledged in accordance with the laws of Illinois.

The mortgagee is Sanwa Business Credit Corporation, One South Wacker Drive, Suite 3700, Chicago, Illinois 60690. The mortgagor is Copperweld Steel Company, an Ohio corporation, 4000 Mahoning Avenue, N.W., Warren, Ohio 44483.

The original Loan and Security Agreement dated December 31, 1986, between Sanwa Business Credit Corporation and Copperweld Steel Company was recorded as number 15163, filed and recorded on February 4, 1987, at 10:35 a.m. with the Interstate Commerce Commission. The Loan and Security Agreement is secured by, among other things, 1000 h.p. GE 115 ton diesel locomotive, 45 ton GE diesel locomotive, 600 h.p. GE class BB/190 95 ton model 4 GE 747 diesel, number 3 locomotive 95 ton GE diesel, 10 Baldwin Westinghouse diesel locomotive 50 ton narrow gauge, 11 Baldwin Westinghouse diesel locomotive 50 ton narrow gauge, 600 h.p. GE 95 ton diesel locomotive class BB/190 DL6793260G1, 40-50 ton diesel electric locomotive crane, and 40-50 ton diesel locomotive crane.

**Much Shelist Freed Denenberg Ament & Eiger, P.C.**

Interstate Commerce Commission  
August 22, 1988  
Page Two

I am enclosing a recording fee of \$10 for the amendment. Please return the original document to me. If there are any questions, you may contact me at (312) 621-1409.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Evon Olson", written in dark ink.

Evon Olson

EO/lh  
Enclosure  
cc: James B. Gottlieb

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

OFFICE OF THE SECRETARY

9/1/88

Evon Olson  
200 North LaSalle Street  
Suite 2100  
Chicago, IL 60601

Dear

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 9/1/88 at 3:20PM, and assigned recordation number(s). 15163-A

Sincerely yours,

*Nesta R. McGee*  
Secretary

Enclosure(s)

SEP 1 1988 - 9 44 PM

FIFTH AMENDMENT TO LOAN AND SECURITY AGREEMENT  
INTERSTATE COMMERCE COMMISSION

THIS AMENDMENT is made as of the 1st day of AUGUST, 1988, by and between SANWA BUSINESS CREDIT CORPORATION, a Delaware corporation, with its principal place of business at One South Wacker Drive, Chicago, Illinois 60606 ("Lender") and COPPERWELD STEEL COMPANY, an Ohio corporation, with its principal place of business at 4000 Mahoning Avenue, N.W., Warren, Ohio 44483 ("Borrower").

BACKGROUND

A. Lender and Borrower have previously entered into a Loan and Security Agreement dated December 31, 1986, wherein Lender agreed to make certain loans and advances to Borrower. The Loan Agreement previously has been amended on March 25, 1987, September 11, 1987, November 19, 1987 and May 9, 1988 (the Loan and Security Agreement, as amended by such amendments, is referred to as the "Loan Agreement" and all capitalized terms used in this Amendment and not defined herein shall have the meanings ascribed to them in the Loan Agreement).

B. Borrower has requested that Lender (i) increase the amount of loans and advances that Lender may make to Borrower under the Loan Agreement from \$25,000,000 to \$30,000,000, (ii) increase the maximum amount of Collateral Availability as to Eligible Accounts (as such terms are defined in the Loan Agreement) from \$15,000,000 to \$20,000,000, and (iii) extend the termination date for the Loan Agreement from January 1, 1989 to June 30, 1989.

C. Lender has agreed to make the changes requested by Borrower, provided that Borrower executes this Amendment and complies with the terms and conditions contained in it.

CLAUSES

NOW, THEREFORE, in consideration of the premises set forth above and the mutual covenants and promises contained in this Amendment, and in further consideration of the continuing extension of credit by Lender to Borrower under the Loan Agreement, Lender and Borrower agree as follows:

1. The first paragraph of Section 2.1 of the Loan Agreement is deleted in its entirety and replaced with the following paragraph:

"2.1 Total Facility. Lender may, in its sole and absolute discretion, make available for Borrower's use from time to time during the term of this Agreement, upon Borrower's request therefor, certain loans and other financial accommodations (the "Total Facility"). The Total Facility shall be subject to all of the terms and conditions of this Agreement and

shall consist of a revolving line of credit consisting of advances against Eligible Accounts and Eligible Inventory (the "Revolving Loan") in an aggregate principal amount not to exceed, at any time outstanding, the lesser of (i) \$30,000,000 or (ii) the outstanding amount of Collateral Availability. As used in this Agreement, "Collateral Availability" shall mean and, at any particular time and from time to time, be equal to the sum of (i) up to eighty percent (80%) of the net amount (after deduction of such reserves as Lender deems proper and necessary) of Eligible Accounts plus (ii) up to fifty percent (50%) of the aggregate value of Eligible Inventory (determined on the basis of the lower of first-in, first-out cost or market value, both net of such reserves as Lender deems proper and necessary), provided that Collateral Availability as to Eligible Accounts shall not at any time exceed Twenty Million Dollars (\$20,000,000) and provided further that Collateral Availability as to Eligible Inventory shall not at any time exceed Fifteen Million Dollars (\$15,000,000). The Revolving Loan shall be repayable on demand and as provided in Section 4.2."

2. Section 2.4 of the Loan Agreement is deleted in its entirety and replaced with the following paragraph:

"2.4 Term of Agreement; Liquidated Damages. This Agreement shall be in effect until June 30, 1989 (the "Initial Term") and shall be automatically renewed thereafter for successive periods of one year (the "Renewal Term") unless terminated as provided below. Either party shall have the right to terminate this Agreement at the end of the Initial Term or at the end of any Renewal Term by giving the other party at least sixty (60) days' prior notice of such termination. This Agreement may also be terminated by Lender upon the occurrence of a Default as provided in Section 11. Upon the effective date of termination, all of the Liabilities shall become immediately due and payable without presentment, notice or demand. Notwithstanding any termination, until all of the Liabilities shall have been fully paid and satisfied, Lender shall be entitled to retain its security interest in the Collateral, Borrower shall continue to remit collections of Accounts and proceeds of Collateral as provided in this Agreement, and Lender shall retain all of its rights and remedies under this Agreement. If, during the Initial Term or any Renewal Term, this Agreement is terminated by Borrower other than as permitted in this Section 2.4, Borrower shall pay to Lender, for loss of the bargain and not as a penalty, as liquidated damages and compensation for

the costs of Lender being prepared to make funds available to Borrower under this Agreement, an amount (the "Prepayment Fee") equal to fifty percent (50%) of the average monthly interest charges and Credit Availability Charges during the elapsed portion of the Initial Term or the Renewal Term, as the case may be, multiplied by the number of full or partial months remaining between the date of such termination and the end of the Initial Term or the Renewal Term, as the case may be."

3. In consideration of Lender's agreement to enter into this Amendment, Borrower shall pay to Lender, upon execution of this Amendment, a fee (the "Fee") in the amount of Twelve Thousand Five Hundred Dollars (\$12,500). Lender is authorized and directed to charge the Fee to the Loan Account (as defined in the Loan Agreement).

4. Borrower is presently in the process of renegotiating the terms of that certain Promissory Note (the "Subordinated Note") in the principal amount of \$20,000,000, dated January 1, 1987, executed by Borrower and payable to the order of Southern Cross Investment Company ("Southern"). The indebtedness evidenced by the Subordinated Note has been subordinated to the Liabilities (as defined in the Loan Agreement). If, by September 30, 1988, Borrower and Southern have not agreed on the terms of the Subordinated Note, which terms are acceptable to Lender in its sole discretion, then each of (i) the maximum amount of the Total Facility, which is presently \$30,000,000, and (ii) the maximum amount of Collateral Availability as to Eligible Accounts, which is presently \$20,000,000, as the foregoing are set forth under Section 2.1 of the Loan Agreement, shall be reduced by \$500,000 on the first day of each month, commencing on October 1, 1988, for each month during which Borrower has not finalized the terms of the Subordinated Note pursuant to the provisions of this paragraph, provided that, except as otherwise provided in the Loan Agreement, Collateral Availability as to Eligible Accounts shall not be reduced at any time below a maximum of \$15,000,000 and the Total Facility shall not be reduced at any time below a maximum of \$25,000,000.

5. So long as no Default or Event of Default, as specified in the Loan Agreement, has occurred, then, Lender agrees that it will not make demand for \$10,000,000 of the principal amount of the Liabilities until June 30, 1989.

6. Attached to this Amendment as Exhibit A is a schedule of Borrower's projected income for the months of July, 1988 through December, 1988. On or before December 31, 1988, Borrower shall provide Lender with Borrower's projected income for the months of January, 1989 through June, 1989 (the projected monthly income of Borrower as set forth on Exhibit A, as supplemented by the delivery of projected monthly income for

January, 1989 through June, 1989, is referred to as the "Projected Income"). If Borrower fails to earn at least eighty percent (80%) of its Projected Income during any month from July, 1988 through June, 1989, as shown on the monthly financial statements that Borrower is required to deliver to Lender pursuant to Section 10.1(F)(ii) of the Loan Agreement, then each of (i) the maximum amount of the Total Facility, which is presently \$30,000,000, and (ii) the maximum amount of Collateral Availability as to Eligible Accounts, which is presently \$20,000,000, as the foregoing are set forth under Section 2.1 of the Loan Agreement, shall be reduced by \$500,000 for each month in which Borrower fails to earn eighty percent (80%) of its Projected Income for such month, provided that, except as otherwise provided in the Loan Agreement, Collateral Availability as to Eligible Accounts shall not be reduced at any time below a maximum of \$15,000,000 and the Total Facility shall not be reduced at any time below a maximum of \$25,000,000. Any reduction in the maximum amount of Collateral Availability as to Eligible Accounts, as provided by this Paragraph 5, shall be made on the earlier of (i) the date Lender receives a monthly financial statement which shows that Borrower failed to earn at least eighty percent (80%) of its Projected Income for the month that is the subject of such financial statement, or (ii) if no monthly financial statement is delivered to Lender as required by Section 10.1(F)(ii) of the Loan Agreement, the date on which such financial statement was due. The loan amount reductions set forth above will be made at the sole discretion of Lender after Lender has reviewed Borrower's monthly financial statements and Lender shall have the right to waive compliance with the loan reductions required by this Paragraph 6; provided, however, any such waiver shall not affect, waive or diminish any right of Lender thereafter to demand strict compliance with this Paragraph 6.

7. Except as expressly modified by this Amendment, the Loan Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties to this Amendment have set their hands and seals on the day and year first written above.

ATTEST:

By: *Ronald E. Rami*  
Its: Vice President & Treasurer

COPPERWELD STEEL COMPANY

By: *Donald P. DeLeon*  
Its: Executive Vice President

SANWA BUSINESS CREDIT  
CORPORATION

By: *John J. Giusiano*  
Its: First Vice Pres.

jpg-7522100san  
026cop-7/29/88-6  
fifth amendment



CORPORATE ACKNOWLEDGMENT

STATE OF Ohio )  
 ) SS.  
COUNTY OF Trumbull )

I, BARBARA A. SIEMBIEDA, a Notary Public in and for said County, in the State of aforesaid, certify that and DONALD E. REARIC and DONALD J. DELUCA of COPPERWELD STEEL COMPANY, an Ohio corporation, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President & Treasurer and EXECUTIVE Vice President appeared before me this day in person and acknowledged that they signed, delivered and attested the said instrument as their free and voluntary acts and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 9th day of August, 1988.

Barbara A. Siembieda  
Notary Public

My Commission Expires:

BARBARA A. SIEMBIEDA, Notary Public  
State of Ohio

My Commission Expires September 28, 1991

CORPORATE ACKNOWLEDGMENT

STATE OF Illinois )  
COUNTY OF Cook ) SS.

I, Linda J Florence, a Notary Public in and for said County, in the State of aforesaid, certify that John J Abruscato of SANWA BUSINESS CREDIT CORPORATION, a Delaware corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such FIRST VICE President, appeared before me this day in person and acknowledged that he/she signed, delivered and attested the said instrument as his/her free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 5<sup>th</sup> day of August, 1988.

Linda J Florence  
Notary Public

My Commission Expires:

1-29-89

EXHIBIT A

SCHEDULE OF PROJECTED INCOME

<u>Month</u>	<u>Projected Income (before taxes)</u>
July, 1988	\$ 675,000
August, 1988	675,000
September, 1988	1,122,000
October, 1988	616,000
November, 1988	616,000
December, 1988	420,000